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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 465

JOHN C. COOKINGHAM,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petition of John C. Cookingham respectfully represents to this Honorable Court as follows:

A

Summary Statement of the Matter Involved

Petitioner brought this action to recover damages for personal injuries which he sustained in the course of his employment as a Cook on the respondent's merchant vessel, the "Rufus W. Peckham". The Courts below held as a

matter of law on the following facts that there was no cause of action either under the doctrine of unseaworthiness or negligence.

While the vessel was anchored in the Port of Philadelphia on July 29, 1946, petitioner was granted shore leave until July 31st to visit his family. He returned to the vessel with his wife and child on July 30th, between 7:00 P. M. and 8:00 P. M. o'clock, to ascertain whether he would be required to cook breakfast the following morning. While he and his family were in the messroom, petitioner was directed to prepare a night lunch for another member of the crew, and it was while he was descending the stairs to the chill box that he slipped upon a blob of jello, which caused him to fall and sustain serious injury (R. 23a, 24a, 41a, 42a). The trial judge found as facts that the stairway in question was used by galley men to carry food from the chill box to the galley, and that during the voyage food had frequently been dropped on it (R. 41a). The vessel was "continually having trouble with the steps because the messmen dropped food there" (R. 108a). On the day of the accident, supper had been served at 6:00 P. M. o'clock, and the food was probably brought upstairs at that time. The accident occurred at about 8:30 P. M. o'clock (R. 114a).

It was contended that under the foregoing facts, the respondent was liable in damages because of the failure to provide a safe place to work, an absolute duty under the maritime law, and because of the negligence of a fellow servant in creating the unsafe place in depositing the jello on the stairway. Both contentions were denied by the trial court, and the Court of Appeals, in a split decision, affirmed the judgment of the trial court. The majority of the Court below held that the duty to provide a safe place to work is not related to the obligation to provide a seaworthy vessel and appliances, and the shipowner's liability is measured

in terms of common law negligence, rather than by the absolute duty under the maritime law. With respect to the charge of negligence, the majority held that to make out a case of liability it was essential to show that the unsafe place existed for such a period of time as to have put the shipowner on notice with an opportunity to correct the condition. The majority refused to apply the theory that the shipowner could be held liable for the negligence of a fellow servant in creating the unsafe condition.

The Chief Judge of the Court below dissented from his two colleagues and held that the decision of the majority was in direct conflict with the opinion of this Court in *Mahnich* v. *Southern Steamship Co.*, 321 U. S. 96, which held that the duty of the shipowner was an absolute one to provide and maintain a safe and seaworthy vessel, and this duty was not qualified by the fact that the unsafe condition resulted from the negligence of a fellow servant.

B

Jurisdictional Statement

This petition seeks a review upon the ground that the decision of the Court below would effect a radical change in the maritime law in connection with the duty to provide a safe place to work, which duty has heretofore been construed to be an absolute one under the applicable decisions of this Court. The decision of the Court below on this point is in direct conflict with the opinions of this Court in *Mahnich* v. *Southern Steamship Co., supra; The Osceola,* 189 U. S. 159; *Carlisle Packing Co.* v. *Sandanger,* 259 U. S. 255.

The decision of the Court below also erroneously construes the Federal Employers' Liability Act (45 U. S. C. A. 51), which was incorporated into the maritime law by the Jones Act (46 U. S. C. A. 688), by refusing to recog-

nize the theory of liability that a shipowner could be liable for the negligence of a fellow servant in creating an unsafe place, notwithstanding the fact that the statute makes the shipowner expressly liable for the negligence of any officer, agent or employee.

The suit in this case was predicated upon the maritime law as modified by the Act of Congress known as the Merchant Marine Act, March 4, 1915, c. 153, sec. 20, 38 Stat. 1185; June 5, 1920, c. 250, sec. 33, 41 Stat. 1007, 46 U. S. C. A. 688.

The date of the judgment entered herein by the United States Court of Appeals for the Third Circuit, affirming the judgment of the District Court, is September 20, 1950.

The jurisdiction of this Court is invoked under Title 28 of the United States Code, Section 1254 (1) and under Article 3, Section 2 of the Constitution of the United States.

C

Questions Presented

1. Is the shipowner's obligation to provide a safe place to work within the absolute duty under the maritime law which does not depend upon the exercise of reasonable care, or is it governed by common law principles which require proof of negligence?

2. Is the shipowner's liability for negligence limited to the *failure to remove* an unsafe condition after due notice of it, or is the shipowner also liable for the negligent actions of his employees in *creating* the unsafe condition?

Reasons Relied On For The Allowance Of The Writ

1. The decision of the Court below would change the maritime law by withdrawing from it the shipowner's

traditional obligation to maintain the vessel and its appurtenances in a safe condition, and placing it within the common law rules which require proof of negligence as compared to the absolute duty of the maritime law. This holding of the Court is in direct conflict with the decisions of this Court in *The Osceola, supra; Mahnich* v. *Southern Steamship Co., supra; and Carlisle Packing Co. v. Sandanger, supra,* which expressly hold that the shipowner's duty to provide a safe place is an absolute one within the warranty of seaworthiness, and requires the vessel and all its appliances to be maintained and kept in order throughout the entire period of the voyage.

2. The decision of the Court below would qualify the absolute duty under the maritime law by holding that a transitory unsafe condition aboard the vessel does not fall within the doctrine of unseaworthiness. That holding is in irreconcilable conflict with the decisions of this Court in *Mahnich v. Southern Steamship Co., supra* and *Carlisle Packing Co. v. Sandanger, supra,* both of which cases involved transitory unsafe conditions resulting from the negligence of a fellow servant. In the *Mahnich* case, the mate negligently selected a piece of faulty rope to construct a scaffold which collapsed under the weight of a seaman. The lower courts there declined liability under the maritime law on the contention that the rope was a "consumable supply" and that the accident was due to the negligence of a fellow servant. The Supreme Court held that the shipowner could not be insulated from liability by the negligence of a fellow servant; that the fact that the rope was a consumable supply was irrelevant, and the failure to maintain and keep in order the vessel's appliances was a breach of the warranty of seaworthiness. In the *Carlisle* case, a can, which had ordinarily contained coal oil and was so labeled, had been negligently filled with

gasoline, as a result of which a member of the crew was injured by the explosion which occurred when he used it in starting a fire in the stove. The trial court submitted the case to the jury upon principles of negligence, but the Supreme Court ruled that the condition, although created by a negligent act, was a breach of the warranty of seaworthiness and the jury should have been so instructed. Both of the foregoing decisions clearly prohibit the rule adopted by the Court below which would qualify the doctrine of unseaworthiness where an unsafe condition is transitory in nature.

3. The Court of Appeals erroneously limited the shipowner's liability for negligence in creating an unsafe place. It held that the respondent could only be held liable on the basis that it failed to remove the foreign substance after due notice of its existence. The maritime law was supplemented by the Jones Act [1] which incorporated all of the statutes relating to railway employees into the maritime law. The pertinent Railway Act [2] provides, inter alia, that the employer shall be liable for all injuries resulting in whole or in part from the negligence of any officer, agent or employee of such employer. On the basis of this section of the Railway Act, an employer may be held liable not for only for failing to correct an unsafe condition, but he may also be held liable for the very act of any employee in creating the unsafe condition in the first instance. The Court below refused to consider the latter theory, and held that the shipowner may be held liable only by reason of the failure to remove the unsafe condition after notice. The decision below is thus in con-

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[1] March 4, 1915, c. 153, sec. 20, 38 Stat. 1185; June 5, 1920, c. 250, sec. 33, 41 Stat. 1007, 46 U.S.C.A. 688.

[2] April 22, 1908, c. 149, sec. 1, 35 Stat. 65; August 11, 1939, c. 685, sec. 1, 53 Stat. 1404, 45 U.S.C.A. 51.

flict with the express language and plain purport of the Railway Act, which was incorporated into the maritime law for the benefit of the seamen.

Wherefore, your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the Third Circuit, commanding that court to certify and send to this court for review and determination on a day certain, to be named therein, a full and complete transcript of the record and proceedings in the case numbered and entitled on its docket No. 10,142, *John C. Cookingham* v. *United States of America,* and that the decree of the United States Court of Appeals for the Third Circuit in this case may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as may be just.

And your petitioner will ever pray.

JOHN C. COOKINGHAM,
By ABRAHAM E. FREEDMAN,
Counsel for Petitioner.

I hereby certify that I have examined the foregoing petition, and that in my opinion it is well founded and entitled to the favorable consideration of this Court, and that it is not filed for the purpose of delay.

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

The Opinions of the Courts Below

The opinion of the United States District Court for the Eastern District of Pennsylvania was rendered on July 20, 1949 and is reported in 87 F. Supp. 203.

The majority and dissenting opinions of the Court of Appeals for the Third Circuit were rendered on September 20, 1950 and are reported in 184 F. 2d 213.

II

Jurisdiction

Inasmuch as the jurisdictional statement has been set forth heretofore in the Petition, a restatement here is omitted in the interests of brevity.

III

Statement of the Case

Inasmuch as a statement of the case has been heretofore set forth in the Petition, a restatement here is omitted in the interests of brevity.

IV

Specification of Errors

The Court of Appeals erred in the following respects:

First: In holding that the obligation to maintain and keep in order the vessel and all its appurtenances is not within the shipowner's absolute duty under the maritime law, but is governed by common law principles of negligence.

Second: In holding that the doctrine of unseaworthiness relates only to defects in the physical structure of the vessel and its appliances, but not to dangerous conditions which are transitory in nature.

Third: In failing to hold that a shipowner may be liable on principles of negligence for an unsafe condition which is created by the act of a fellow servant.

V

ARGUMENT

Summary of Argument

Because of the nature and condition of the seamen's employment, the maritime law has placed a great responsibility for their safety on the shipowners. There is an absolute duty under the maritime law to furnish a seaworthy vessel and to maintain and keep in order all its appliances in a safe condition throughout the voyage. The breach of this duty, without regard to the exercise of reasonable care, makes the owner liable to the seamen in damages. The Court below held that the absolute duty required the shipowner only to furnish appliances which were inherently sound, but it did not extend to unsafe conditions of a transitory nature. This holding would effect a substantial change in the maritime law, as announced in numerous decisions of this Court, including *The Osceola, supra; Mahnich* v. *Southern Steamship Co., supra;* and *Carlisle Packing Co.* v. *Sandanger, supra.* These decisions clearly hold that the shipowner's absolute duty is not qualified by transitory or other conditions where the place of work is, in fact, unsafe.

The Court of Appeals below also incorrectly limited the shipowner's liability under principles of negligence. Since the Jones Act incorporated into the maritime law all of the

statutes relating to Railway employees, a shipowner may be held liable for any of the acts of its agents, officers and employees in *creating* an unsafe condition, irrespective of whether the shipowner had notice and an opportunity to remove it. The Court below erroneously construed the Railway Acts by holding that the shipowner may be deemed negligent only upon proof of notice and opportunity to remove the unsafe condition. This is an erroneous view of the shipowner's liability upon principles of negligence.

FIRST POINT

There Is An Absolute Duty Upon The Shipowner To Furnish A Safe And Seaworthy Vessel And Appliances And To Maintain Them In A Safe Condition Throughout The Period Of The Voyage.

It would seem that the Court below incorrectly interpreted the law because it did not fully recognize the nat..e of the shipowner's obligation and the corresponding remedies of the seamen.

A unique relationship exists between the shipowner and the seamen which has no counterpart in shore employment. The late revered Mr. Chief Justice Stone pointed out in *Mahnich* v. *Southern Steamship Co., supra,* that the seamen are subject to the rigorous discipline of the sea, and all the conditions of the service constrain them to accept, without critical examination and without protest, working conditions and appliances as commanded by superior officers. The Chief Justice then significantly concluded (page 104):

> ". . . These conditions, which have generated the exacting requirement that the vessel or the owner must provide the seamen with seaworthy appliances with which to do his work, *likewise require that safe appliances be furnished when and where the work is to*

be done. For, as was said in The Osceola, supra (189 U. S. 175, 47 L. Ed. 764, 23 S. Ct. 483), the owner's obligation is 'to supply and *keep in order* the proper appliances appurtenant to the ship.' "

The nature of the shipowner's duty in this respect was very aptly described by Mr. Justice Rutledge in *Seas Shipping Co.* v. *Sieracki, 328 US 85,* as follows (page 94):

". . . *It is essentially a species of liability without fault,* analogous to other well known instances in our law. Derived from and shaped to meet the hazards which performing the service imposes, *the liability is neither limited by conceptions of negligence nor contractual in character.* Mahnich v. Southern S. S. Co., 321 U. S. 96, 88 L. Ed. 561, 64 S. Ct. 544, supra; Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 58 L. Ed. 1208, 34 S. Ct. 733, 51 LRA (NS) 1157; Carlisle Packing Co. v. Sandanger, 259 U. S. 255, 66 L. Ed. 927, 42 S. Ct. 475, supra. *It is a form of absolute duty owing to all within the range of its humanitarian policy.*"

In the *H. A. Scandrett,* 87 F. 2d 708, Judge Hand, speaking for the Court of Appeals for the Second Circuit, pointed out that the duty is not to be confused with requirements for proof of negligence, as follows (page 711):

"In our opinion the libelant had a right of indemnity for injuries arising from an unseaworthy ship even though there was no means of anticipating trouble.

"The ship is not freed from liability by mere due diligence to render her seaworthy as may be the case under the Harter Act (46 U. S. C. A. Sec. 190-195) where loss results from faults in navigation, but under the maritime law there is an absolute obligation to provide a seaworthy vessel and, in default thereof, liability follows for any injuries caused by breach of the obligation. . . ."

The decision of the Court below would change this absolute duty under the maritime law upon the basis that once

the shipowner has furnished a seaworthy vessel and appliances at the outset of the voyage, he may not thereafter be held liable except upon a showing that he failed to exercise due care in maintaining the vessel and its appliances in proper order. This ruling collides head-on with the decisions of this Court in the cases cited, and it would cut the very heart out of the warranty of seaworthiness. The shipowner's duty is not merely to furnish a safe and seaworthy vessel at the commencement of the voyage, but the same absolute duty requires him, as the Chief Justice pointed out in the *Mahnich* case, to furnish and keep in order the proper appliances "when and where the work is to be done". The same rule was laid down in *The Osceola, 189 U. S. 158* at page 175, as follows:

> "That the vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and *keep in order* the proper appliances appurtenant to the ship."

The absolute duty under the maritime law thus requires the shipowner to maintain the vessel and all its appurtenances in safe and proper order throughout the voyage, and this breach of this duty makes the shipowner liable for personal injuries without regard to considerations having to do with the exercise of diligence or other factors related to negligence. The decision of the Court below cannot be reconciled with these established principles.

SECOND POINT

The Doctrine Of Unseaworthiness Includes Not Only Physical Defects In The Structure Of The Vessel And Its Appliances, But It Extends To All Unsafe Conditions, Whether Transitory Or Otherwise.

The duty to provide a safe place to work has always been inseparably attached to and a part of the shipowner's

warranty of seaworthiness. In this case the Court below departed from the established maritime rule, and held that the duty to provide a safe place to work was a separate doctrine which was controlled by principles of common law negligence and did not fall within the doctrine of seaworthiness. This cutting down of the basic maritime duty is in direct conflict with the rule expressly laid down by this Court and by various Courts of Appeals. In *The Seeandbee,* 102 F. 2d 577, the Court of Appeals for the Sixth Circuit specifically pointed out that the warranty of seaworthiness included the duty to provide a safe place to work, as follows (page 581):

> "It is the duty of a shipowner or master to supply a seaworthy vessel for its employees and *this does not depend on the exercise of reasonable care, but is absolute.* The H. A. Scandrett, 2 Cir., 87 F. 2d 708. A seaman does not assume the risk of injury even from obvious dangers if the proximate cause thereof is the failure of the shipowner or master to *supply* and *keep in order* proper appliances appurtenant to the ship *and the same rule applies for failure to provide a safe place in which to work.* Cleveland Cliffs Iron Company v. Martini, 6 Cir., 96 F. 2d 632; Socony-Vacuum Oil Company v. Smith, 305 U. S. 424, 59 S. Ct. 262."

From the earliest times, the shipowner has been held liable for injuries due to unsafe conditions, whether created by inherent defects or by the negligence of any of the vessel's personnel. In some of these earlier cases, where the unsafe condition was caused solely by the negligence of a fellow servant, the Courts imposed liability in terms of "neglect" of the owner to furnish a safe place to work. These decisions were reviewed by the Supreme Court in *The Osceola, supra* and in the *Mahnich* cases, and this Court pointed out that the Courts in the earlier cases were really talking about unseaworthiness rather

than negligence. In the *Mahnich* case, the Chief Justice, after making a comprehensive review, pointed out (page 101):

> "The Osceola, 189 U. S. 158, 47 L. Ed. 760, 23 S. Ct. 483 supra, in answer to certified questions, laid down as separately numbered and independent propositions the rule of the owner's unqualified obligation to furnish seaworthy appliances, and the rule that the owner is not liable to a seaman for the negligence of his fellow servants. *It nowhere intimated that the owner is relieved from liability for providing an unseaworthy appliance, merely because the unseaworthiness was attributable to the negligence of fellow servants of the injured seaman rather than to the negligence of the owner.* Indeed, to support the rule of absolute liability, the Court, see *The Osceola, supra* (189 US 173-175, 47 L. Ed. 763, 764, 23 S. Ct. 483) relied on cases in which the vessel or its owner had been held liable for injuries resulting from unseaworthiness, although application of the fellow servant rule would have barred recovery. Of one, The Frank and Willie (DC) 45 F. 494, supra, the Court, after pointing out that the seaman was injured by reason of the negligent failure of the mate to provide a safe place in which to work said, *'the question was really one of unseaworthiness and not of negligence.'*
>
> "The Court cited, discussed and relied upon The Noddleburn (DC) 12 Sawy 129, 28 F. 855, supra; Olson v. Flavel (DC) 13 Sawy 232, 34 F. 477; The Frank and Willie, supra, and The Julia Fowler (DC) 49 F. 277, supra. *In each the seaman was injured as a result of his use of unseaworthy appliances rendered so by the negligence of a fellow servant.* In The Julia Fowler, supra, the injury was caused by a fall from a boatswain's chair which the Court found, as in this case, was rigged with defective rope by reason of the fault of the mate. The inapplicability of the fellow servant rule to this type of case was recognized explicitly in The Noddleburn, supra ((DC) 12

Sawy 129, 28 F. 585), and in The Frank and Willie, supra ((DC) 45 F. 495-497). And such was our holding in Carlisle Packing Co. v. Sandanger, supra, where it was said (250 U. S. at p. 259, 66 L. Ed. 930, 42 S. Ct. 475) 'without regard to negligence the vessel was unseaworthy.' See also the discussion in The H. A. Scandrett, supra (CCA 2d) 87 F. (2d) 710, 711)."

The Chief Justice then ties in the safe-place-to-work doctrine with the warranty of seaworthiness, as follows (Page 102):

> "In thus refusing to limit, by application of the fellow servant rule, the liability of the vessel and owner for unseaworthiness, this Court was but applying the familiar and then well established rule of non-maritime torts, that the employer's duty to furnish the employee with *safe appliances and a safe place to work,* is non-delegable and not qualified by the fellow servant rule."

The same doctrine was applied by this Court to impose liability for an unsafe place due to a transitory condition in *Carlisle Packing Co.* v. *Sandanger, supra,* where a can, which ordinarily contained coal oil and was so labeled, was filled with gasoline. It exploded while being used to start a fire, causing injury to one of the seamen. The trial court submitted the case to the jury, charging that "the basis of the action is negligence", and instructed the jury according to the common law rules. This Court held that the trial court was in error, and that the jury should have been instructed that, without regard to negligence, the vessel was unseaworthy if the can marked "coal oil" contained gasoline.

It is evident that the decision of the Court below attempts to change the characteristic features of one of the most important doctrines in the maritime law. The severance of

the safe place doctrine from the warranty of seaworthiness would cut the very heart out of and emasculate the entire rule. It is a direct assualt and a challenge to the announced rule by this Court in the *Mahnich, Osceola,* and *Carlisle* cases, which clearly calls for a review by this Court.

Third Point

The Shipowner's Liability For An Unsafe Place Under Principles Of Negligence Arises Because Of The Negligence Of Any Fellow Employee In Creating The Unsafe Condition, Irrespective Of Whether There Was Notice To The Employer And An Opportunity To Remove The Unsafe Condition.

Although the early maritime law afforded a remedy in any case where an injury resulted from an unsafe condition, that law did not give any right of indemnity in cases where the injury was caused solely by the negligence of a fellow servant, which did not result in an unsafe place; as for example, where a seaman was injured by reason of a negligent order of a superior officer, or was struck by an object negligently dropped by a fellow servant. Congress plugged this gap by the enactment of the Jones Act, which incorporated into the maritime law all statutes relating to railway employees. The first section of that Act provides, inter alia (45 U.S.C.A. 51), that the employer shall be liable for any and all injuries "resulting in whole or in part from the negligence of the officers, agents or employees." On the basis of that act, the Court below should have made a finding that the shipowner was liable because of the negligence of its employees in creating the unsafe condition, which resulted in petitioner's injuries. The trial judge found as facts that the stairway on which petitioner fell was used by members of the Steward's

Department to carry food from the chill box to the galley and that food had frequently been dropped on the stairway in the course of that work; that the last meal had been served about 6:00 P.M. o'clock, and that the petitioner had slipped on a blob of jello on the stairway at about 8:30 P. M. o'clock (R. 114a). The Court below ruled that the shipowner's liability in the instant case must be determined by the rule which requires proof of notice of an unsafe condition and an opportunity to remove it. The Court below declined to apply the rule that the shipowner could be held liable for the act of negligence in creating the unsafe condition.

While we disagree with the finding of the Court below that there was not sufficient proof of notice of the condition, we recognize that this Court should not be burdened with the examination of every application of a legal principle, so long as the legal principle is correctly announced. The complaint which petitioner makes in this respect is that the Court below refused to apply the pertinent principle of law relating to the respondent's negligence. The Court below should have applied the rule which holds a shipowner liable for the negligent acts of its servants in creating an unsafe condition, and the refusal to apply this rule is of sufficient importance to justify the court in granting the petition for certiorari. The decision of the Court below on this point is directly contrary to that of the Supreme Court of California in *Adams* v. *American President Lines,* 1944 A. M. C. 550, the facts in which are strikingly analogous to those at bar. There, there was no direct evidence as to how or when an orange peel happened to be on the stairway, which caused the accident. Plaintiff offered evidence that the crew often gathered at the head of the stairs to eat oranges and that they discarded the orange peels on the decks or threw them at a garbage

pail near the head of the stairs. In holding the shipowner liable for the negligence of the seamen in creating the condition, the Court said:

> "As we have noted, there was no direct evidence as to how the orange peel came to be on the stairway. The plaintiff met the requirements of proof on his part when he introduced evidence from which the jury properly could infer that the presence of the orange peel was due to the act of negligence within the scope of employment."

That decision by the Supreme Court of California is directly opposed to the rule laid down by the Court below in the instant case. It is immediately apparent that the rule of law which was followed in the *Adams* case correctly interprets the maritime law as modified by the Jones Act, with respect to the respondent's liability upon principles of negligence. The decision below deprives petitioner of the benefit of the statute, the plain purport of which would fasten liability to the respondent for the negligence of the vessel's personnel, as in the *Adams* case. The decision below can only lead to confusion unless this Court exercises its right to review.

VI. Conclusion

The decision of the Court below would tear apart the absolute duty which the maritime law has long imposed upon shipowners for the benefit of seamen in the form of court would substitute a common law rule of negligence, the warranty of seaworthiness, and in its place the lower the effect of which is a substantial emasculation of the maritime doctrine. The decision below would also very materially drain much of the vitality from the Railway Acts, which were intended for the benefit of railway employees and seamen. This decision, insofar as the latter

aspect is concerned, must necessarily apply to railway employees as well as to seamen.

It is respectfully urged that the decision of the Court below is so radical a departure from the established doctrines pronounced by this Court that a review is most essential if an incalculable amount of harm and confusion is to be avoided.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.